



**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF HUMAN RESOURCE MANAGEMENT**

## Benefits Administrator Memo

**#05-06**

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**To:** Benefits Administrators  
**From:** Mary P. Habel, Director  
State and Local Health Benefits Programs  
**CC:** All OHB  
**Date:** May 9, 2005  
**Re:** Extended Coverage – Compliance With Final COBRA Regulations

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On May 26, 2004, the Department of Labor published final regulations addressing new COBRA notice requirements. These regulations will also apply to the Extended Coverage provisions of the Public Health Service Act and, therefore, to state government employees. The compliance date for active state employees and non-Medicare-eligible retirees is July 1, 2005. Following is a summary of the changes and our implementation policy.

**New General Notice** – A new model notice format has been provided by the Department of Labor, and it has been adapted to meet the requirements of the state program. A sample of the new format is attached for your use and will be available on the DHRM Web site. The direct link under Resources for Benefits Administrators is <http://www.dhrm.state.va.us/resources/benefitsadmin/benefitsadmintoc.html>. The new regulations set forth a time limit for providing a General Notice to new program participants. New enrollees must be furnished a General Notice within 90 days of the commencement of their coverage.

In order to communicate the provisions of the new regulations, all active employee and non-Medicare retiree group covered participants will be mailed an updated General Notice to their address of record during the week of May 9. It will be appropriately addressed to the employee and, if applicable, the covered spouse and/or dependent children. The mailing of a new General Notice to all participants effectively corrects any

past failures to provide General Notices. After this mailing, it will then be the responsibility of the Benefits Administrator to comply with the regulations by assuring that all participants who begin coverage after May 1 (the date that the mailing list was created) receive a General Notice within the specified time frame. This includes all enrollments of new employees, employees or spouses who elect or are added to coverage at Open Enrollment, employees or spouses who are added based on a qualifying mid-year event, employees who end coverage as full-time employees and commence coverage as part-time employees, and any new coverage that is keyed after May 1 with an effective date prior to May 1. Since suspense records will not be reflected in the May 1 mailing list, Open Enrollment elections for July 1, 2005, for addition of an employee or spouse will require the generation of a General Notice, even if the Open Enrollment election was keyed prior to May 1. Failure to send a timely General Notice negates any requirements for qualified beneficiaries to comply with time limits provided in the notice, so it is extremely important that notices are generated. (In cases where coverage commences and then terminates prior to the 90-day General Notice period, a timely Election Notice satisfies the General Notice obligation.)

Benefits Administrators will receive a summary of employees/retirees in their agency for whom the mass mailed General Notices were returned. It will then be your responsibility to update the participants' addresses and provide updated General Notices by July 1. A copy of the General Notice mass mailing format is attached for your use. You should receive your list, if applicable, in early June.

After the mass mailing, General Notices should be mailed to the address of record and addressed appropriately to the employee and/or spouse, and the mailing should be documented in a consistent manner (e.g., log of notices, copies of notices). Even though we have included reference to dependent children in addressing the mass mailing, it is not necessary to send separate notices to dependent children if they reside with the covered employee and/or spouse who have received a General Notice. Hand delivery of a General Notice to an employee does not fulfill the obligation to provide notice to the covered spouse. However, one notice may be mailed to a covered employee and spouse who live at the same address and whose coverage commences simultaneously. Delivery of a General Notice to all new employees does not fulfill the obligation to deliver a notice for coverage that commences at a later date, so a new employee who does not elect coverage should not be sent a General Notice until coverage is elected.

**New Notice of Qualifying Event** – It is the obligation of the Benefits Administrator to automatically generate an Election Notice upon the occurrence of a qualifying event that is termination of employment, reduction of hours or employee death. However, it is the responsibility of the employee, the qualified beneficiary or a representative to provide notice of a qualifying event that is divorce, a dependent child's loss of eligibility status (except for those who turn age 23 and lose coverage on December 31 of that year), a second 36-month qualifying event that occurs after an 18-month election, and a disability determination after an 18-month election. This is described in detail in the General

Notice and includes specific procedures and time limits for notification. If the qualified beneficiary is not notified of these obligations via the General Notice, time limits and notification procedures may not be enforced. Also, failure to enforce the notification requirements in the General Notice will result in loss of enforcement capability when defined time frames or procedures are not followed. For example, if you accept verbal notice of a qualifying event from one beneficiary, you will have to accept it from all, and your control of this process will be lost. Submission of an enrollment form to change membership may not fulfill/replace the requirement for the new Qualifying Event Notice.

**New Election Notice** – A new model Election Notice has also been provided by the Department of Labor, and a new format adapted for state program use is attached. Election Notices must be sent within 14 days of the loss of coverage (for termination of employment, reduction of hours and employee death) or within 14 days of the Qualifying Event Notice when that notice is required (or within 14 days of the date that coverage is lost due to that qualifying event, if later). Please note the reduced time frame defined in these new rules. (Since there is no separate notification required to a plan administrator, the 44-day rule no longer applies.)

**New Notice of Unavailability of Coverage** – As Benefits Administrator, it will be your responsibility to notify a potential qualified beneficiary in writing when Extended Coverage is requested but is determined to be unavailable (e.g., notice of qualifying event is too late, loss of coverage is not due to a qualifying event). This should be sent within the same time period that an Election Notice would have been sent had it been appropriate, and one notice may be addressed to an employee, spouse and/or dependent, as applicable, who live at the same address.

**New Notice of Early Termination of Extended Coverage** – The new regulations require that any Extended Coverage participant whose coverage is terminated prior to the maximum coverage period (e.g., 18, 29 or 36 months) must be notified in writing of the termination and the reason for termination. This will be the responsibility of either Anthem or Kaiser (as billing agents) or the Office of Health Benefits Extended Coverage Administrator.

**New Special Rule for Medicare Entitlement** – If the qualifying event is termination of employment or reduction of hours and occurs within the 18-month period following Medicare entitlement of the employee, the maximum period of coverage for a covered spouse or dependent will be 36 months from the end of the month in which the Medicare entitlement occurred. (The employee would still only be entitled to the normal 18-month maximum period from the date coverage was lost due to the termination or reduction of hours event.) A place has been provided on the Election Notice to indicate Medicare entitlement for the employee, but an employee who is age 65 or older at the time of termination or reduction of hours should be considered as eligible for Medicare on the first of the month in which his/her 65<sup>th</sup> birthday falls. If Medicare eligibility is determined after receipt of the Election Form, an updated Election Notice may be appropriate to reflect the increased coverage period.

The Health Insurance Manual (HIM) is currently being updated for release in the near future, and the Extended Coverage section will reflect these new requirements as well as continuing basic provisions. Please be sure to review the Extended Coverage section of the new HIM when it is released to ensure your overall knowledge of Extended Coverage requirements. In the interim, the new General and Election Notices provide an excellent overview of Extended Coverage in general. Please keep in mind that failure to comply with Extended Coverage requirements can result in significant financial liability to the state program.

Attachments:

- General Notice
- General Notice for mass mailing
- Election Notice